IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1746

MARY ELIZABETH WILSON,
Plaintiff-Petitioner,

versus

ROBERT W. BICCUM, J. W. MILLER, C. A. GROBE, G. O. PITTMAN, J. J. CURTIS, T. E. DRONE, CHARLES L. HAMMOND AND RETAIL CREDIT COMPANY,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

WEBB M. MIZE, of
Mize, Thompson & Blass
310 Gulf National Bank Building
Gulfport, Mississippi 39501
Attorneys for Defendants-Respondents

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OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is reported as *Mary Elizabeth Wilson, Plaintiff-Appellant, vs. Robert W. Biccum, J. W. Miller, C. A. Grobe, G. O. Pittman, J. J. Curtis, T. E. Drone, Charles L. Hammond and Retail Credit Company*, Defendants-Appellees, 546 F. 2d 676, which affirmed the Opinion of the United States District Court for the Southern District of Mississippi. Both Opinions are in the Appendix to the Petition for Writ of Certiorari.

On the 20th day of June, 1977, the United States Court of Appeals for the Fifth Circuit overruled the Motion of the Plaintiff-Appellant for recall and stay of the issuance of the Mandate and there is a copy of that Order in the Appendix hereto.

JURISDICTION

The Petitioner seeks to invoke the jurisdiction of this Court by way of Petition for Writ of Certiorari through the authority of 28 USC 1254 (1). Petitioner has posed eight questions for review, none of which, in our opinion, would justify a review by way of Certiorari (Rule 19, 1).

QUESTIONS PRESENTED

The questions presented by the Plaintiff-Petitioner grow out of 42 USC 1983 and 42 USC 1986, although we consider all of the questions set forth as being presented in the Petition for a Writ of Certiorari to be false and misleading and that, rather, the questions should be:

a) May a Petitioner avoid being collaterally estopped by recasting adjudicated issues and facts in the form of an action under the Civil Rights Statutes?

b) Is this suit barred by Collateral Estoppel, *Stare Decisis, Res Adjudicata* and *Statute of Limitations* and *Laches*?

STATUTES INVOLVED

1) 42 USC 1983
2) 42 USC 1986
3) Section 15-1-35, Mississippi Code of 1972
4) Section 15-1-49, Mississippi Code of 1972

STATEMENT OF THE CASE

The present case is the fourth appearance of facts and substance constituting the alleged cause of action filed by the Plaintiff-Petitioner, two of the previous suits being by the Plaintiff-Petitioner against the Defendant-Respondent, Retail Credit Company, now Equifax Inc. The individual Defendants were employees of Retail Credit Company and in privity with Retail Credit Company as to matters, substance and facts in this cause. The former cases referred to are: *Mary Wilson vs. Retail Credit Company*, 438 F. 2d 1043, *W. Roberts Wilson vs. Retail Credit Company*, 457 F. 2d 1406, affirming the District Court, 325 F. Supp. 460, and *Mary Elizabeth Wilson vs. Retail Credit Company*, 474 F. 2d 1260. The facts in this case have been heard by each of the Federal District Judges for the Southern District of Mississippi, and by Judges Brown, Goldberg, Gewin, Jones, Ainsworth, Simpson, Bell and Dyer, of the United States Court of Appeals for the Fifth Circuit. The best statement of the case is contained in the Opinion of the District Court, which appears in the Appendix to the Petition for Writ of Certiorari at pages 25a to 32a.

This present suit, as well as the previous three suits, resulted in Summary Judgments on behalf of the

Defendant. In the Record in the instant suit is the complete transcript of all proceedings in the first three suits, showing that the facts essential to the Judgment were actually litigated and determined by valid Final Judgments in the previous suits, which previous suits were not on the theory of a violation of Civil Rights.

The Complaint in the present suit attempts to charge violation of Civil Rights by virtue of a conspiracy between the employees of Retail Credit Company and Retail Credit Company. The allegations of overt actions consist of memoranda, letters and office communications, which were before the Court in all of the former suits.

In the present suit the Motion for Summary Judgment was accompanied by Affidavits of the individual Defendants, all of which showed no conspiracy. There were no counter-affidavits filed on this issue.

Other portions of the Facts will be more fully developed in the Argument.

REASONS FOR DENYING THE WRIT

No questions of substance are presented by Plaintiff-Petitioner that show denial of rights, depriving Petitioner of her day in Court. There is shown no special or important reason for granting the Writ, and the United States Court of Appeals for the Fifth Circuit has not decided an important state or territorial question in this cause in conflict with another Court of Appeals and has not decided an important state or

territorial question in conflict with applicable state or territorial law, and has not decided a question not already settled by this Court, and has not decided a federal question in conflict with applicable decisions of this Court, and has not departed from accepted and usual courses of Judicial proceedings, to call for supervision by this Court.

We do not find in the Petition for Writ of Certiorari that the Plaintiff-Petitioner claims any constitutional right as being violated unless same is included under the Civil Rights Statutes we referred to.

ARGUMENT

The Plaintiff-Petitioner commences argument by citing *Griffin vs. Breckinridge*, 403 U. S. 88, 102-03 (1971), and *Westberry vs. Gilman Paper Company*, 60 FRD 447, and *McLellan vs. Mississippi Power Company*, 526 F. 2d 870, which cases give no help whatever to the Plaintiff-Petitioner, as not all private conspiracies to interfere with the rights of another fall within the Civil Rights Statute.

The instant case was decided on a Motion for Summary Judgment, the Complaint in the case attempting to allege a conspiracy for the violation of the civil rights of the Plaintiff-Petitioner, and there were asserted certain alleged overt acts, which alleged overt acts were in the record of the first of the Wilson suits, as well as in the record of all succeeding ones.

The claimed conspiracy was alleged to have commenced by the writing of a Retail Credit Character and Financial Report on September 13, 1963, and in that

report it was stated, "Others are more severe in their criticism, regarding her as neurotic or psychotic." The alleged overt acts, alleged in the complaint to continue through 1964, consists of letters and office memoranda of employees of Retail Credit Company, but it is alleged that the fruits of the conspiracy culminated on August 16, 1972, when the Court ordered a Summary Judgment based on the Statute of Limitations. This is the Summary Judgment that was appealed and is reported at 474 F. 2d 1260. Summary Judgments entered in the first three Wilson cases were all appealed to the United States Court of Appeals for the Fifth Circuit, and, as aforesaid, all were affirmed. No application was made in any for a Writ of Certiorari to the United States Supreme Court, and the Judgments in the first three Wilson cases are certainly final.

Retail Credit Company, the Respondent here, and the Appellee in all of the Wilson cases, filed affidavits and proof with its Motions for Summary Judgment, in each case, and such proof consisted of depositions, affidavits and admissions. In this cause, the Plaintiff-Petitioner did not file any counter-affidavits, or affidavits, to deny that there was not a conspiracy, under Rule 56(e), Rules of Civil Procedure. Nothing was filed for consideration by the Court to show that there was a genuine issue for trial, as required by such Rule. There is nothing in the record to show that the individual Defendants were not in privity with Retail Credit Company; in fact, all of the proof is to the contrary.

Certainly, the Plaintiff-Petitioner, in the arguments set forth, relies wholly upon allegations of the Com-

plaint, which allegations are not supported by proof (and no proof was offered), and on wishful thinking. There was no genuine issue of fact, and the proof of the Defendants-Respondents stands uncontradicted. *Sitton vs. U. S.*, 413 F. 2d 1386, Cert. denied, 90 S. Ct. 1118, 397 U. S. 988, 25 L. Ed. 395.

Throughout the Petition for the Writ, more than a dozen times, it is stated that the Plaintiff-Petitioner was denied her day in Court, even though this is her fourth case based on the same facts; and, Plaintiff-Petitioner has stated that her cases should not have been dismissed at the pleading stage. We believe that Plaintiff-Petitioner means she should have had a Jury trial, and that her conception is that a hearing on a Summary Judgment is not a hearing on the merits. This theory has been argued on a previous appeal.

PLAINTIFF-PETITIONER'S QUESTION I

Petitioner's Question I is really not a question. Certainly, an individual citizen has the right to resort to the Courts in a Civil suit and the Plaintiff-Petitioner has resorted to the Court, and has been very persistent in her pursuit of damages against the Retail Credit Company. We agree that a citizen has the right of access to the Courts, and that that is a fundamental right. We further agree that a citizen has the right to litigate and sue, and is entitled to equal protection under the law, with full access to the Court for the prevention and redress of wrong. We assert, however, that the Plaintiff-Petitioner has had full access to the Courts, as is shown amply by the former Wilson cases, and the record in this case. Certainly, Question I gives no right for a review by the Court.

PLAINTIFF-PETITIONER'S QUESTION II

Plaintiff-Petitioner's Question II is certainly falsely posed but gives no right for a review by this Court. The allegations of the Complaint and the proof do not sustain some of the incorrect assertions made by Plaintiff-Petitioner in argument. No conspiracy was proved, nor was proof offered, nor, for that matter, do we think any conspiracy was properly alleged; and, certainly, this case is not properly what we consider a Civil Rights case. Nothing is stated in the Complaint except mere conclusions of the Pleader. If the present suit is properly a Civil Rights suit, then any tort action could be brought under the Civil Rights statutes and we do not believe that it is the intent of the Act that every tort or injury might be brought under the Civil Rights statute. There is no racial animus and no state action. The Plaintiff-Petitioner does not represent any Class. Charging in the Complaint is not sufficient without proof. The Civil Rights statutes do not attempt to reach a conspiracy to deprive one of civil rights unless deprived of equality, equal protection of the laws, or equal protection and immunity under the law. *Collins vs. Hardyman*, 341 U. S. 651, 71 S. Ct. 937, 95 L. Ed. 1253.

Plaintiff-Petitioner claims her rights were violated because of non access to the Courts, and that she was deprived of her constitutional rights under color of state law. The fact that the decisions and statutes of the State of Mississippi prevented recovery by Mrs. Wilson because of Qualified Privilege and Limitation of Action is not sufficient involvement by the State to be an action under color of State law within the meaning of the Civil Rights Act. *Martin vs. Pacific*

Northwest Telephone Co., 441 F. 2d 116, Cert. denied, 92 S. Ct. 89, 404 U. S. 873, 30 L. Ed. 117.

Plaintiff-Petitioner alleges that she was "lied to." This is stated at least twice; but, there is no proof whatever in the record to sustain that allegation. Mistakenly, the Plaintiff-Petitioner argues that her former suits were not heard on the merits, meaning that a suit dismissed on Summary Judgment is not dismissal on the merits.

It is also stated by the Plaintiff-Petitioner that it was impossible for her to learn the nature of the libelous credit reports, and this was argued in Mrs. Wilson's second suit.

On page 21 of the Petition, the Plaintiff-Petitioner states that the two earlier suits — one for libel, and the other for products liability, "were dismissed because the statute of limitations problem and the technicality of failure to allege malice."

This statement in the Petition is erroneous, as we can find nothing in the Opinions of the Court in the former cases to state that a dismissal occurred because of malice. The Opinion, however, does state:[1]

> "Nothing in the Report indicates any malice, or that anything more was done than simply report in good faith what they found from informants to be the facts about which such questionnaire related . . ."

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1 438 F. 2d 1043

and

> "There is nothing in the record before the Court to show the existence of any fraud on the part of the Defendant . . ."

and

> "Nothing is said in any response to that motion to deny good faith on the part of the defendant in making such report."

In the Opinion in the second Wilson case,[2] we find:

> "Likewise, the inter-office memoranda do not reflect any bad faith or malice on the part of the employees of the defendant company, but merely demonstrate their understandable concern that the contents of a confidential report had been revealed to the person who was the subject thereof and their attempts to verify the information contained therein."

Another misleading statement is made by the Plaintiff-Petitioner: "Although the instant case demonstrates clear and convincing evidence sufficient to establish the conspiracy without circumstantial evidence . . ." No evidence was presented by the Plaintiff-Petitioner, and the statement just above quoted is entirely erroneous.

We believe it must be the position of the Plaintiff-Petitioner that filing affidavits in Court and filing a

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2 *W. R. Wilson vs. Retail Credit Company*, 325 F.Supp. 460, affirmed at 457 F. 2d 1406.

Motion for Summary Judgment, denies the Plaintiff-Petitioner her day in Court. She states that affidavits that were filed were false and misleading, although there is no proof of this, and nothing was filed in the District Court to support this statement. The Findings of the Court below in these cases clearly indicate the falsity of these unfair and unwarranted statements in Plaintiff-Petitioner's Petition for the Writ.

It is further argued under Question II that:

> ". . . the defendants' reliance on the judicially protected privilege and the custom and usage of the times, made it virtually impossible for the plaintiff to learn of the nature of the libelous credit reports, and this appears to be sufficient to state a cause of action uner [sic] 42 USC § 1983, because there was a discriminatory action by the defendants against the class of persons upon whom libelous credit reports were made."

That statement is most interesting, inasmuch as it has been urged in all of the previous three Wilson cases, and, from the Opinion in 325 F. Supp. 460, page 465, we find:

> "The deposition of the plaintiff's wife and the affidavits of various Commercial Credit Company employees, filed in Civil Action No. 3846, reveal that Mrs. Wilson made numerous inquiries concerning this 1963 report, and in doing so, informed these employees of her knowledge of the existence of the report. She

also claimed to have seen the report and have knowledge of the contents thereof. Although Mrs. Wilson, in her deposition, claims to have only been 'fishing' or 'bluffing' in these assertions, it would seem to be more than coincidental that she should use the word 'neurotic' in referring to the contents of her report. See Atwell v. Retail Credit Company, 431 F. 2d 1008 (C. A. 4, 1970). In order for a particular misrepresentation to constitute fraud which would toll the running of the Statute of Limitations, it must be made under such circumstances, and be of such nature that a reasonably prudent person would act thereon. New York Life Ins. Co. v Gill, 182 Miss. 815, 182 So. 109 (1938)."

We further cannot understand the statement on page 27 of the Petition, where it is stated,

> ". . . it is obvious as well as law of the case that Mrs. Wilson was not able to sue the defendant Retail Credit Company after the defendants undertook all of the activities, mentioned above and below, which are the basis of this present suit."

Our answer to this is that Mrs. Wilson has filed three separate suits on the same facts and has had the opportunity of suing since the year 1963, when she first learned of the contents of the report.

Furthermore, the overt acts set forth as part of the claimed conspiracy to violate the Civil Rights of the

Plaintiff-Petitioner, delineated in the Amended Complaint in this cause, are all set out in the Report of the Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary in the United States Senate, Ninetieth Congress, Second Session, pursuant to Senate Resolution No. 233, Credit Bureaus and Reporting, held on December 10 and 11, 1968.

While the record shows, and the Opinion of the Court, as aforesaid shows, that Mrs. Wilson was fully cognizant of the nature of the report prior to the Senate Hearings, these so-called overt acts were made public during the Hearings and are published in the record.

Furthermore, in a deposition in Mrs. Wilson's first case (Supplemental Record 25, pages 16-17 thereof) the Plaintiff-Petitioner agreed that her file might be opened to the public.

The Plaintiff-Petitioner argues that the Statute of Limitations does not run until commission of the last overt act done in the pursuance of the conspiracy. No conspiracy was shown in this case. There is not a scintilla of evidence of any conspiracy. No evidence by affidavit or otherwise, as to such, was introduced or filed on the Motion for Summary Judgment, which Motion the Court sustained. The proof was to the contrary, that there was no conspiracy among the Defendants.

The last overt act alleged was that of the District Court granting Summary Judgment in Mrs. Wilson's second suit. This is a lefthanded allegation that the Court was a part of the conspiracy because it granted Summary Judgment.

The allegation that the Plaintiff-Petitioner is a member of a class is meaningless, as the Statute of Limitations of Mississippi, and the laws of privilege, are common to all citizens.

The claim of the Plaintiff-Petitioner to being a member of a class, which we do not consider applicable in this case, cites affidavit and deposition of Len O. Holloway, who worked for Retail Credit Company for a short while in 1968 and 1969, some five or six years after the so-called libelous report was made,[3] and we assume that the Plaintiff-Petitioner felt that because a bad report was made on her she was in that percentage and became a member of a Class. However, Mrs. Wilson's report was made long prior to 1968, the time spoken of by witness Holloway. The lower Court in this cause, in its Opinion, found that both affidavits were irrelevant and immaterial to the action.

PLAINTIFF-PETITIONER'S QUESTION III

Plaintiff-Petitioner's Question III is inconsequential. The proof does not show that the Defendants-Respondents were conspirators. The proof does not show that the individual Defendants-Respondents were acting in an individual, separate and distinct capacity, and for their benefit separately. The proof in the record concerning the alleged conspiracy is that offered by the individual Defendants-Respondents.

3 Affidavit of Boaz was likewise filed after submission of Motion for Summary Judgment. Affidavit of Boaz stated that there was a policy for some percentage of reports to be rejected, although this affidavit was not relevant, and was filed too late. Boaz was not acquainted with Plaintiff-Petitioner and worked only out of the Richmond, Virginia, office. He stated Retail Credit Company required certain rejections.

This proof conclusively shows that all that was done by the individuals was in their capacity as employees, agents, or as attorneys for the Defendant-Respondent Retail Credit Company. The allegations of the Complaint cannot be considered as evidence and these allegations cannot contravert the proof on Motion for Summary Judgment.

PLAINTIFF-PETITIONER'S QUESTION IV

Plaintiff-Petitioner's Question IV is also a false issue in this suit. The first Paragraph of the Argument of Plaintiff-Petitioner under Question IV disposes of the question as being frivolous. It shows that no proof of damage has been made and that the damage occurred at one time or the other when one of the Motions for Summary Judgment was sustained. This is tried to be tied in with the alleged conspiracy, making the Court a part of the conspiracy by sustaining Motions for Summary Judgment. No injury to person or property has been proven in the instant case. Contrary to the statement in Plaintiff-Petitioner's Argument: "Plaintiff filed her first suit and was denied a trial on the merits," the Plaintiff-Petitioner has had successive trials. The District Court, in its Opinion in this cause, states:

> "The kind of state action required under 42 U. S. C., §1983, certainly does not contemplate case law of the State of Mississippi, nor the decisions by this Court and the Fifth Circuit recognizing the case law of Mississippi. Any and all allegations alleging state action under 42 U. S. C. 1983 should therefore be dismissed with prejudice."

PLAINTIFF-PETITIONER'S QUESTION V

Again, Question V is a false issue. The posed question assumes that there was a conspiracy. The proof shows that there was none. The proof shows that no individual Defendant-Respondent conspired for his separate benefit. Unless collateral estoppel is the law of this case, collateral estoppel is meaningless. The overt acts, alleged as being part of the conspiracy engaged in by the individual Defendants-Respondents, were a part of the Senate Hearings, as foresaid. Those papers, documents and memoranda before the Senate Committee, and in the record, in each of the Wilson cases, contained the same question of fact and, as was said in *Mary Elizabeth Wilson vs. Retail Credit Company*, 474 F. 2d 1260:

> "In short, where a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, that determination is conclusive between the parties in a subsequent suit on a different cause of action."

The Opinion of the Fifth Circuit Court of Appeals in this cause does not mention collateral estoppel, but affirms the District Court, which stated:

> "Accordingly the motion for summary judgment is well taken for the same reason given by the Fifth Circuit in its decision reported at 474 F. 2d, p. 1261, that is, collateral estoppel."[4]

4 The Lower Court's Opinion, however, also held that the Statute of Limitations applied.

There is nothing in the proof to show that the individual Defendants-Respondents were not in privity with the corporation, Defendant-Respondent Retail Credit Company. There is nothing to indicate that the individual Defendants-Respondents were acting personally and for their own benefit.

> ". . . 'A final valid determination on the merits is conclusive on the parties and those *in privity* with them as to the matters adjudged, or which should have been litigated in another action or proceeding involving the same cause of action.' " (emphasis ours) *Sitton vs. U.S., supra*.

Many misleading statements are made in the Petition, and certain cases are cited in support of the statement that collateral estoppel cannot be applied in Civil Rights actions in the Federal Court. The cases do not support that statement.

In the case of *Kaufman vs. Moss*, 420 F. 2d 1270, we find that

> "Where a Motion to Dismiss is made on the basis of collateral estoppel, it is usually necessary for the Court to examine the record of the prior trial, unless it appears on the face of the Complaint that it is barred by issues decided in the prior adjudication."

The entire record of all of the three former Wilson cases was before the Court on the Motion to Dismiss and the Motion for Summary Judgment.

Where a Court of competent jurisdiction has entered final Judgment on the merits, the parties and their privity are bound not only as to matters offered and received to sustain or defeat claim or demand, but as to any other admissible matter which might have been offered. *Sealand Services, Inc. vs. Gaudet*, 94 S. Ct. 806, 414 U. S. 573, 39 L. Ed. 2d 9, Rehearing denied, 94 S. Ct. 582, 415 U. S. 986, 39 L. Ed. 2d 883. *Rankin vs. State of Florida*, 418 F. 2d 482, Cert. denied, 90 S. Ct. 1358, 397 U. S. 1039, 25 L. Ed. 2d 650.

The case of *Garrigan vs. Giese, et al*, 420 F. Supp. 68, Affirmed, 553 F. 2d 35 (1977) concerned an action that was brought three times, claiming a conspiracy for the reduction of Civil Service grade by the United States and certain Army employees who participated in the grade reduction. That recent case was similar to the instant case in that the facts were the same and different causes of action were alleged in the separate suits, as well as different causes of action against the privies, and the Court held that *res adjudicata* and estoppel applied.

PLAINTIFF-PETITIONER'S QUESTION VI

The Plaintiff-Petitioner does not separately argue his Question VI, and we will follow the same course.

PLAINTIFF-PETITIONER'S QUESTION VII

Plaintiff-Petitioner's Question VII is likewise false. There is no proof that damage did not occur until February 20, 1973, and there is no proof of any damage occurring at all. All of the overt acts are contained in the Senate Report, with the exception of the allegation

that the Defendant-Respondent obtained Summary Judgments and Dismissals of the former suits.

We believe that the law is that a Defendant is entitled to make any valid defense that it might have. The original suit was a tort suit, based on libel; then we had products liability, invasion of privacy, deprivation of constitutional rights, etc. (it having been argued in Mrs. Wilson's second suit that she was denied her rights under the Constitution). She argued and contended that the application of the Statute of Limitations deprived her of due process of law on her alleged claim. She further contended she had been denied the equal protection of the law. This issue was heard, argued and determined in a previous appeal. We do not see how this Court can determine any damage as no proof of same has been offered.

PLAINTIFF-PETITIONER'S QUESTION VIII

No issue is raised by Plaintiff-Petitioner's Question VIII. The collateral estoppel does apply to all claims upon which all of the Wilson suits have been heard and determined. There is no pendent claim.

CONCLUSION

Even though the Plaintiff-Petitioner names this action as a Civil Rights suit, or a conspiracy to violate the Civil Rights of the Plaintiff-Petitioner, this does not make it so. Even though, in the Petition, she talks of a conspiracy, there is no cause of action stated, only conclusions. Retail Credit Company is a corporation. All of the many individuals who have been served with process are agents or officers and occupy some

managerial or professional position with Retail Credit Company, with the exception of Charles L. Hammond who, at the time complained of, occupied a position with Retail Credit Company as an investigator and wrote the report that has been the subject of all of the litigation. His affidavit showed that he never conspired tortiously or otherwise with any of the Defendants-Respondents in this cause against the Plaintiff-Petitioner, and that everything he did was in relation to his employment.

We pointed out, under Questions presented, that the Plaintiff-Petitioner was collaterally estopped from filing this suit as she recast adjudicated issues and facts in the attempted action under the Civil Rights Statutes, and that the suit was barred by Collateral Estoppel, *Stare Decisis, Res Adjudicata* and Statute of Limitations and *Laches*.

Actually, in the case now before the Court the Plaintiff-Petitioner attempts to substitute this suit for the right of appeal of previous cases growing out of the same facts. No applications for Certiorari to this Court were made in any of the earlier suits. See *Angel vs. Bullington*, 67 S. Ct. 657, 330 U. S. 183, 91 L. Ed. 832.

Again, in this cause, the Plaintiff-Petitioner states that a Summary Judgment cannot have a collateral estoppel effect and that by attempting to bring this suit on the theory of denial of Civil Rights that there is no collateral estoppel.

The Fifth Circuit recently, in the case of *Exhibitors Poster Exchange, Inc. vs. National Screen Service Corporation*, 543 F. 2d 1106, held that repeated actions

such as the Plaintiff-Petitioner has engaged in, in this cause, is a frivolous appeal and sanctions were allowed. In that case it was stated:

> "Once again the appellant, Exhibitors Poster Exchange, Inc., urges that a summary judgment cannot have collateral estoppel effect. The same argument was urged to us and decided against this same appellant in Exhibitors Poster Exchange, Inc. vs. National Screen Service Corporation, et al., 5 Cir., 1975, 517 F. 2d 110, cert. denied, 423 U. S. 1054, 96 S. Ct. 784, 46 L. Ed. 2d 643 (1976)."

It has been our purpose in this Response to the Petition for Writ of Certiorari to emphasize that proof was not offered to support the allegations of the First Amended Complaint, and the general rule of law is that litigation must end, and that the Court reject the right of continuous litigation of issues determined in earlier actions, especially where the causes were heard upon affidavits unrefuted and which the other party had ample time to refute. *Prichett vs. Duke Power Company*, 49 FRD 116, affirmed, 429 F. 2d 984.

The Wilson cases, all cited above, have been presented on the theories of libel, products liability, invasion of right of privacy, denial of property rights, violation of the Fifth and Fourteenth Amendments, misrepresentation and deceit, interference with property and contract rights and finally, in this cause, conspiracy to violate the Civil Rights Statutes.

It is said in a footnote in the third Wilson case:

> "... Regardless of the disingenuous characterization, no new facts are alleged in the present litigation which were not already decided by the previous suit."

We, therefore, respectfully submit that the Petition for the Writ should be denied, as there is no important federal question presented. The decision is not in conflict with other Circuits. The case does not present any new questions of law, and, litigation must come to an end, the Plaintiff-Petitioner having known the facts since the latter part of 1963.

Respectfully submitted.

WEBB M. MIZE, of
Mize, Thompson & Blass
Attorneys at Law
310 Gulf National Bank Building
Gulfport, Mississippi 39501

Attorneys for Defendants-Respondents

CERTIFICATE

I, Webb M. Mize, of the firm of Mize, Thompson & Blass, attorneys of record for Defendants-Respondents, do hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing Brief for Respondents in Opposition to Wm. Roberts Wilson, Jr., attorney for Plaintiff-Petitioner, P. O. Box 1507, Pascagoula, Mississippi 39567.

THIS, the ____ day of July, 1977.

Webb M. Mize

APPENDIX

In the United States Court of Appeals
For the Fifth Circuit

No. 75-1033

MARY ELIZABETH WILSON,
Plaintiff-Appellant,
versus

ROBERT W. BICCUM, J. W. MILLER,
C. A. GROBE, G. O. PITTMAN, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi

ORDER:

The motion of appellant for recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED. See Fifth Circuit Local Rule 15, as amended January 11, 1972.

/s/ JOHN R. BROWN
UNITED STATES
CHIEF JUDGE

[Filed: June 20, 1977]